In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 919

EUGENE K. FRIEDMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On October 7, 1963, petitioner was hired by the Federal Aviation Agency ("FAA") as a Realty Specialist (GS–11) under a temporary appointment not to exceed one year. On January 5, 1964, his appointment was converted to what is known as a TAPER appointment—a "temporary appointment pending establishment of a register" of persons eligible under Civil Service regulations to fill that position (R. 14). Petitioner retained that temporary position until August 31, 1965, when his employment was terminated because a career employee who had been serving in Alaska exercised his right to return to his former position and the agency was unable, "due to lack of

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funds," to offer petitioner any other comparable position (R. 17). Petitioner thereupon instituted this action in the Court of Claims, alleging that he had been wrongfully separated from his employment. The Court of Claims granted the government's motion for summary judgment on the ground that "there is no statutory or regulatory basis for plaintiff's claim" (Pet. App. 1).

The decision of the court below is plainly correct. The documents filed in support of the government's motion for summary judgment—the truth of which was not challenged by petitioner—refute the allegation that petitioner's separation from employment was arbitrary or malicious (Pet. 7). Petitioner's employment was terminated in accordance with applicable regulations and in a manner which did not reflect adversely upon his character or work performance.

Nor is there substance to the claim (Pet. 8–9) that the termination was occasioned by the fact that he was a veteran [1] or that it violated petitioner's rights under the Veterans' Preference Act, 5 U.S.C. 851 *et seq.* (1964 ed.). Petitioner was not entitled by that Act to replace classified career employees with many years of service, and that is what he was allegedly told by his division chief (Pet. 5). Even the evidence prepared and relied upon by petitioner discloses that FAA had no openings to which petitioner could be appointed at the

[1] Petitioner's contention that he was denied a permanent appointment because he was a veteran was raised for the first time in his Petition for Reconsideration in the Court of Claims. The court's decision granting summary judgment for the government did not, therefore, reflect that contention.

time of his separation (R. 60–61). The Act accorded him no right to employment in those circumstances.

Finally, this case involves no violation of Civil Service regulations (Pet. 10–12). As a TAPER employee, petitioner was not in a permanent classified status. *Bennett* v. *Udall*, 301 F. 2d 532 (C.A.D.C.). He could properly be "separated at any time upon notice in writing from an appointing officer." Federal Personnel Manual, Chapter 316–5, Subchapter 2, Section 2–2. The exhortation in the FAA Internal Placement Handbook which urges supervisors to make "every effort * * * to convert a temporary to a permanent appointment if a suitable vacancy exists * * *" (Pet. 10–11) plainly give temporary appointees no absolute right to demand such an appointment.[2]

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1967.

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[2] Petitioner does not appear to contend in this Court, as he did below, that FAA was bound to give him a permanent appointment because of the representation of his supervisor that he would do "all in [his] power" to place him in a permanent position (R. 52). Even if this had amounted to an informal oral agreement—and we submit it fell far short of that—it would give petitioner no right to such a position. See, *e.g.*, *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409; *Barnes* v. *United States*, 138 Ct. Cl. 76, 80.

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